STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 14, 2012
V	No. 303891 Oakland Circuit Court
PAMELA LYNN STREY, Defendant-Appellant.	LC No. 2009-229041-FC

Before: STEPHENS, P.J., and WHITBECK and BECKERING, JJ.

PER CURIAM.

Defendant was convicted after a jury trial of armed robbery, MCL 750.529. She was sentenced to 5 to 20 years' imprisonment and appeals as of right. We affirm.

Defendant argues that she was denied the effective assistance of counsel where her trial attorney committed several serious errors. To prevail on a claim of ineffective assistance, a defendant must show that counsel's performance was defective, and that the deficient performance was prejudicial and deprived the defendant of a fair trial. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Lloyd*, 459 Mich 433, 446; 590 NW2d 738 (1999). To show prejudice, the defendant must show that, but for counsel's error, there is a reasonable likelihood that the result would have been different. *People v Shively*, 230 Mich App 626, 628; 584 NW2d 740 (1998).

Defendant moved for a hearing to support her claims pursuant to *People v Ginther*, 390 Mich 436, 442-443; 212 NW2d 922 (1973). The trial court denied the motion. Consequently, this Court's review is limited to mistakes that are apparent on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002).

Defendant has identified three alleged "serious errors" made by counsel. First, she claims that counsel erred in failing to insist on or pursue a lineup. Defendant's claim that the district court "ordered" a lineup at the preliminary examination but that counsel failed to ensure that it occurred is not supported by the record. We are not persuaded by the claim that counsel's performance was constitutionally deficient when she for failed to to request a lineup and did not also move to quash the complainant's identification at the showup. Given the context of this case, counsel may well have perceived that even if the identification at the show up was quashed and a lineup held, there was a great probability that the complainant would have reiterated her identification at the lineup and in court. While the suggestive show up identification might have

been quashed, it not likely that the lineup would have produced a different result. The robbery occurred at noon, and the complainant got a very good look at the robber. At trial, she said the robber was "right up to her face." The complainant may very well have identified defendant at the requested lineup. Even if she did not successfully identify defendant, the prosecution had significant evidence of defendant's guilt independent of the victim's testimony. After the robbery, two witnesses followed the robber's vehicle, one of whom wrote down the license number, which matched defendant's plate. The complainant's purse and contents were then found in the same area through which defendant had just driven. Finally, defendant told different stories to police and at trial, and neither was particularly believable. Therefore, in connection with this asserted error, defendant has not shown that her counsel's performance fell below an objective standard of reasonableness or that it prejudiced her defense. .

Secondly, defendant claims that counsel erred in not pressing to have the security video enhanced. This argument lacks merit, because Sergeant Silverthorn, the officer in charge, testified that enhancement of security footage did not generally produce a clear picture. Defendant failed to counter this testimony. As a result, she has failed to show that enhancement of the video would likely have changed the result of her trial.

Finally, defendant argues that her counsel was ineffective by not interviewing, subpoenaing, or calling witnesses to the robbery. Inadequate preparation or failure to call witnesses to support a defendant's theory can be found to be ineffective assistance, although the decision of which witnesses to call is generally a matter of trial strategy. *People v Johnson*, 451 Mich 115, 120-124; 545 NW2d 637 (1996); *People v Bass*, 247 Mich App 385, 391-392; 636 NW2d 781 (2001); *People v Hoyt*, 185 Mich App 531, 537-538; 462 NW2d 793 (1990). Here, however, the one witness allegedly identified by police, the man with the tire iron who called out to "follow that car," was not named in the record and there is no proof that police (or defense counsel) knew his identity. Defendant produced no affidavits or offers of proof regarding the substance of the other alleged witnesses' testimony. In this situation, we cannot say that defendant was denied a substantial defense or the effective assistance of counsel. See *People v Avant*, 235 Mich App 499, 508; 597 NW2d 864 (1999). Defendant failed to overcome the "strong presumption that counsel's performance constituted trial strategy." *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

Affirmed.

/s/ Cynthia Diane Stephens
/s/ William C. Whitbeck
/s/ Jane M. Beckering